UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ENRICHETTA RAVINA,

Plaintiff,

v. 16 Civ. 2137 RA

COLUMBIA UNIVERSITY, et al.,

Defendants.

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June 22, 2018
2:00 p.m.

Before:

HON. RONNIE ABRAMS,

District Judge

(Telephonically in open court)

(Case called)

THE COURT: Good afternoon to all of you.

Mr. Sanford, I have on the phone. Is that right?

MR. SANFORD: Yes, your Honor. Good. Afternoon.

THE COURT: Good afternoon.

We are here today regarding defendants' motion for summary judgment. I don't think anyone requested oral argument, so I am ready to rule today. If, however, there is something you want to add, I promise to keep an open mind.

I am going to rule orally, and it is just because of the July trial date. I assume you would rather, even if it requires sitting here for a little bit, would like getting my ruling and my reasoning sooner rather than later. That is my intention today.

So the parties are familiar with the background of the case and the general summary judgment standard. I am not going to go over that. I will recite the relevant facts and the standard of review for each claim as I discuss it.

As a preliminary matter, plaintiff's motions to strike and to file a sur-reply are denied. I am denying defendant Bekaert's motion for summary judgment and granting in part and denying in part defendant Columbia's motion for summary judgment. There are a lot of claims in this case, so I am going to tell you how I've grouped them and how I'll discuss

them today.

Plaintiff's complaint contains 18 counts. She has brought all 18 against Columbia and the first four against Professor Bekaert. The claims are brought pursuant to either New York City's human rights law, Title VII or Title IX. Many of the counts deal with the same allegations, so I have grouped them as follows:

First, the city and federal hostile work environment claims, Counts 3, 9 and 15;

Second, the city and federal retaliation claims, Counts 4, 10 and 16;

Third, the city and federal quid pro quo claims, Counts 2, 8 and 14; and

Fourth, the city and federal discrimination claims related to tenure and termination, Counts 1, 5, 6, 7, 11, 12, 13, 17 and 18.

In short, for the reasons I'll outline this afternoon, I am granting summary judgment on Bekaert's nonsupervisory status, the federal quid pro quo claims against Columbia, and any liability stemming from alleged direct discrimination by Columbia. I am denying summary judgment as to the rest of the claims.

In other words, I am allowing to go to trial all of the claims alleging discrimination and retaliation against Professor Bekaert as well as the claims against Columbia that

are based on the following theories:

That Columbia negligently handled plaintiff's complaints, allowing Bekaert's alleged retaliation and discrimination to negatively affect her tenure prospects and the claim that Columbia retaliated against plaintiff for her complaints.

So I'll start with the hostile work environment claims against Professor Bekaert and Columbia brought pursuant to both federal and New York City law. I am denying summary judgment on those claims except to the extent that I find that Bekaert was not plaintiff's supervisor. So I'll first recite the relevant standards.

At summary judgment, a plaintiff making a federal hostile work environment claim must demonstrate that a reasonable trier of fact could conclude:

One, that the workplace was permeated with discriminatory intimidation that was sufficiently severe or pervasive to alter the conditions of his or her work environment;

Two, the specific basis exists for imputing the conduct that created the hostile work environment to the employer. Citing Rojas, 660 F.3d at 106. Courts should look at the totality of circumstances and relevant factors including the frequency and severity of the conduct, whether it was physically threatening or humiliating, and whether it

unreasonably interfered with the plaintiff's work performance. Rivera, 743 F.3d at 20. The environment need not be unendurable or intolerable before it is actionable, and the severe or pervasive standard does not mean that employers are free from liability in all but the most egregious cases. Feingold, 366 F.3d at 150. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature can create an actionable hostile work environment claim. Meritor, 477 U.S. at 65.

For a city hostile work environment claim, Section 8-107(1)(a) of the New York City Administrative Code makes it unlawful for an employer or an employee or agent thereof, because of the gender of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

The City Human Rights Law is not co-extensive with its federal and state counterparts. Rather, the city law has broad and remedial purposes, and I am quoting from Section 8-130, and "courts must analyze the law's claims separately and independently from any federal and state law claims, construing its provisions broadly in favor of discrimination plaintiffs to the extent that such a construction is reasonably possible. I am citing the Ya-Chen Chen case, 805 F.3d at 75. Rather than set out different standards for hostile work environment and

other types of gender discrimination claims, the city law contains only the provision prescribing imposition of different terms, conditions and privileges of employment based on gender. Clarke, 2013 WestLaw 2358596, at *11.

To establish a claim under the city law, plaintiff need only demonstrate by a preponderance of the evidence that she has been treated less well than other employees because of her gender. Mihalik, 715 F.3d at 110. Severity and pervasiveness are relevant only to the issue of damages. Furthermore, the discriminatory motive need not be the sole motive. Id. at 113. In analyzing such claims, courts must consider the totality of the circumstances.

Turning to the record in this case, plaintiff has testified to an extensive history of what she characterizes as unwarranted sexual advances by Defendant Bekaert. For example, according to plaintiff, at a dinner with her in 2012, Bekaert asked if she had a boyfriend, said it was good she didn't, and laughed in reaction to her attempt to characterize the dinner as merely one between colleagues. That is from plaintiff's additional facts, at 357-360.

In a taxi after that dinner, plaintiff testified Bekaert ran his hand down her back, 360. At another dinner in 2013, Bekaert allegedly boasted to plaintiff about his sexual history, 367-370. Plaintiff testified such conduct continued at least during fifteen more interactions in the Fall of 2013,

381-92. Plaintiff also testified that Bekaert pulled her toward him and kissed her after another dinner in September 2013, 387. At another dinner shortly afterwards, plaintiff testified that Bekaert made another unwanted advance on her by grasping her hand, 389. During some of these interactions, plaintiff claims that Bekaert directed the conversation to the topics of pornography and prostitutes, 391-392.

According to plaintiff, in the context of similarly sexual talk, Bekaert told plaintiff that if she were nicer to him, her academic papers would progress at a faster pace, at 399. The conduct allegedly continued in 2014, including an instance when plaintiff testified that Bekaert told her that he was horny after she had gone to see him in his office for work purposes, 403.

In these instances, accepted as true at this stage, and others make out a prima facie case for plaintiff's hostile work environment claim under the relatively low standard of the City Human Rights Law. See the Baez case, 2017 WestLaw, 57858, at *5, as well as the severe or pervasive federal standard.

In response, Bekaert asserts that the defense that such incidents were no more than petty slights or trivial inconveniences, an argument which, if true, would relieve him of liability. Mihalik, at 111. Columbia similarly argues that Bekaert's conduct towards plaintiff was not unwelcome, and in any event was not sufficiently severe or pervasive.

At this stage, on this record, however, the Court finds a reasonable jury could find otherwise. The incidents described by plaintiff were not isolated -- they were purportedly numerous and spread out over a multi-year period. Bekaert and Columbia characterize many of the interactions with plaintiff very differently than she does, but the Court cannot at this stage assume the role of the jury and determine matters of credibility and conflicting testimony.

The contrary evidence defendants may cast plaintiff's allegations into doubt, but only so much as to leave the matter deeply disputed. The Court finds that the conduct at issue, as described by plaintiff, is not so innocuous, incredible or isolated that no reasonable jury could find Bekaert liable under either the city law or the federal standard.

To impute liability for Bekaert's conduct to Columbia, however, requires additional findings. Under the city law, a reasonable jury must be able to find that Columbia knew of Bekaert's conduct and failed to take immediate and appropriate corrective action. See New York City Administrative Law 8-107(13)(b)(2). Under the federal standard, either the liable employee must be a supervisor, or, if he is only a co-worker, the employer must have acted negligently, i.e., not monitored the workplace, failed to respond to complaints, failed to provide a system for registering complaints, or effectively discouraged complaints from being filed. See the Vance case,

570 U.S. at 449. An employer may try to show that it exercised reasonable care to prevent and promptly correct any sexual harassing behavior and that a plaintiff-employee unreasonably failed to take advantage of any corrective opportunities provided. Townsend, 679 F.3d at 50.

Columbia argues first Bekaert was not a supervisor as a matter of law. The Court agrees with Columbia on this point.

A supervisor is an employee who can take tangible employment actions against another employee, meaning actions such as hiring, firing, failure to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Vance, at 431.

Here, plaintiff states that Bekaert assigned her work, could exclude her from their research project, and evaluated her performance. She also argues that there is a natural asymmetry of power between a senior and junior faculty member. But those traits fall short of the necessary tangible employment action mandated by the Supreme Court in Vance. See the Murphy case, 2018 WestLaw 1831847, at *6-7. Plaintiff's cited cases, all but one of which were decided well before the Supreme Court's Vance opinion, do not convince the Court otherwise.

Plaintiff has also alleged, however, Columbia acted negligently in handling Bekaert's conduct. Although a close question, in my view, the Court ultimately agrees with

plaintiff that this is a triable issue for a jury. Plaintiff alleges that Columbia conducted a delayed and inadequate investigation of Bekaert's conduct that resulted only in training, did not conduct an investigation of Bekaert's alleged retaliation against plaintiff, and that a Columbia administrator attempted to dissuade her from filing complaints.

Specifically, plaintiff asserts that it took Columbia two months after her initial complain to formally launch an investigation and that the investigator told Columbia, before he had interviewed any witnesses, that Columbia had taken all the right steps. Plaintiff's Exhibits 135 and 139. Plaintiff also testified that the Columbia Business School Dean expressed frustration about dealing with her complaint and predicted that nothing will come out of it. Ravina deposition at 227-33.

While Columbia contends that its response was adequate, at this stage the Court must view the evidence in the light most favorable to plaintiff and assume a jury may credit her version of events. See Petrosino, 385 F.3d at 226. Perhaps the most serious event -- the alleged attempt to dissuade plaintiff's complaint -- depends on fact-intensive determinations of credibility and context best left to a jury. Plaintiff may not have been entitled to her preferred outcome of Columbia's investigation, but a failure to investigate or an attempt to discourage a complaint, if true, would not meet the required standard of being reasonably calculated to address the

problem. See Cowan, 2017 WestLaw, at *6. Thus, there is a triable issue as to whether Columbia acted negligently in addressing plaintiff's complaints against Bekaert and whether it failed to take immediate and appropriate corrective action.

Accordingly, defendants' motions for summary judgment on both the city and federal hostile work environment claims are, therefore, denied except as to the supervisory issue.

I next turn to defendants' motions for summary judgment on plaintiff's retaliation claims brought pursuant to both federal and city law. I am denying summary judgment on those claims.

A plaintiff making a federal retaliation claim must offer evidence that she participated in a protected activity, suffered an adverse employment action, and there is a causal connection between her engaging in the protected activity and the adverse employment action. Ya-Chen Chen, 805 F.3d at 70. The defendant must also know about the protected activity. Baldwin, 690 Fed.App'x at 697. Such a showing establishes a presumption of retaliation, which a defendant may rebut by articulating a legitimate, non-retaliatory reason for the adverse action. The burden then shifts back to the plaintiff to establish that the desire to retaliate was the but-for cause of the action. Id.

Under Section 8-107(7) of the New York City Administrative Code, retaliation in any manner by those engaged

in discriminatory conduct is prohibited against persons who oppose such discriminatory practices or challenged or reported the practice to authorities. Plaintiff alleging such retaliation must show a reasonable jury could conclude that a defendant's conduct was reasonably likely to deter a person from engaging in protected activity. Fincher, 604 F.3d at 723. There need not be a materially adverse employment action by a defendant, Id., and summary judgment is appropriate only if the record establishes as a matter of law that retaliation played no role in the defendant's actions. Ya-Chen Chen at 76. New York courts have found a jury is generally best suited to evaluate the impact of retaliatory conduct in the context of heavy world of workplace realities. Mihalik, at 112.

Plaintiff has based her retaliation claims on Bekaert's conduct, Columbia's decisions surrounding her denial of tenure and leave, and on imputing Bekaert's behavior to Columbia.

Turning first to Bekaert's conduct, it is undisputed that plaintiff complained of his conduct both to Columbia and via his lawsuit, and that Bekaert knew of her complaints. Thus, plaintiff engaged in protected activity and Bekaert knew of it.

Plaintiff alleges that Bekaert took the following adverse actions against her in retaliation for her protected activity:

First, she has presented evidence Bekaert allegedly disparaged her professional reputation by emailing other academics and economists, including Bekaert's then-girlfriend and other close friends, calling plaintiff a damn evil bitch, berserk, insane and incredibly evil, sick and crazy, and other variations on the same theme.

Second, plaintiff has testified and presented evidence Bekaert allegedly obstructed plaintiff's research work. On October 27, 2014, citing reasons related to the status of the research data, Bekaert wrote, "I no longer think it is a good idea for plaintiff to work on the research project by herself."

Plaintiff also asserts Bekaert delayed her work by not responding to various requests and drafts in a timely manner, had her perform time-wasting exercises, and threatened to revoke her access to data. Plaintiff has testified that these and other delays were intended to harm her career as punishment for her protected activity. A number of faculty at Columbia's business school also expressed objections, stating in a January 22, 2016 letter to business school administrators that Bekaert "has not met his obligation as co-author and senior colleague to to do all he can to speed the process of having his and plaintiff's joint work reviewed and published, knowing that failing to do so would have adverse consequences for plaintiff's prospects for tenure, calling the circumstances highly unusual and regrettable."

Plaintiff cites a number of angry messages Bekaert sent to others about her as evidence of the causal connection between such actions and their retaliatory nature. In one such email, Bekaert wrote of plaintiff in the context of academic publishing that "if she goes it alone against my will, I will stop her. I know every single editor." Plaintiff's Exhibit 127.

In response, Bekaert disputes the nature of his work with plaintiff, arguing that he and plaintiff worked productively and that any undue delays were the fault of plaintiff. Bekaert dismisses plaintiff's other allegations of retaliation as vague and conclusory. The Court disagrees at this stage. Plaintiff has identified a number of specific actions she alleges to have been made against her in purported retaliation for protected activity. How to credit and characterize those actions is a disputed factual matter for the jury, as is causation. Bekaert's anger towards plaintiff in the aftermath of her complaints has been well-demonstrated, allowing a reasonable jury to conclude that retaliation, rather than work-related reasons, motivated Bekaert's subsequent conduct, and that the conduct was reasonably likely to deter plaintiff from protected activity. See Vega, 801 F.3d at 90 and Fincher at 723.

At trial, Bekaert may of course argue his communications about plaintiff and his girlfriend and other

friends were simply his personal opinions about a contentious matter. But because the people to whom Bekaert disparaged plaintiff plausibly could have been an effect on her career, a jury must decide the disputed nature of such communications and whether the intent behind them was retaliation. Arguments that any delays were either beneficial to plaintiff or the fault of plaintiff are similarly disputed factual issues the Court cannot resolve on summary judgment.

Turning next to Columbia's conduct concerning plaintiff's tenure and leave denial, Columbia argues there is no causal connection between her complaints as to Bekaert's behavior in 2014 and the denial of tenure two years later. It contends there is no evidence of improper motive on the part of Columbia and the time gap between the two events is too great to sustain the claim.

Plaintiff counters there were multiple instances in which he engaged in protected activity, including an August 21, 2015 email to a Columbia division chair, who communicated its content to administrators, that she might "go to court," the filing of her September 23rd, 2015 state lawsuit; and conversations with Columbia's legal counsel concerning possible claims against the university.

Columbia's message apologizing that an earlier letter, which arguably appeared to grant Ravina leave, had actually been a "huge mistake" came less than a week, less than one week

after the lawsuit, on September 29th, 2015. Furthermore, on December 15, 2015, plaintiff's counsel told Columbia's counsel that a lawsuit would soon be filed. The following day, in an email marked "Important Urgent Update," a Columbia administrator wrote that "after meetings with lawyers," it was decided that plaintiff needs to go through the tenure process now, as opposed to the tenur process delay plaintiff testified she had been previously been notified of through her prior counsel. With roughly a month to submit her materials on what her division chair described as a "compressed timeline," plaintiff asked for personal leave, but that request was denied. The Court finds that this close time proximity between plaintiff's protected activity and Columbia's actions is sufficient to establish a causal connection for summary judgment purposes. See, e.g., Summa v. Hofstra, 708 F.3d at 128.

Columbia articulates legitimate, non-retaliatory reasons for its conduct: it argues there is no evidence of influence by Mr. Bekaert on the tenure decision, which was based on plaintiff's inadequate academic publishing record; that the possible June grant of leave to plaintiff was, in fact, an honest mistake; and that Columbia offered plaintiff a break in service rather than leave but plaintiff refused it. Columbia also emphasizes that plaintiff never formally requested leave.

Plaintiff counters that she is not arguing that the merits of the tenure decision, only abbreviated timeline and conditions that led to it; that the grant of leave is a disputed fact question; and that the offered break in service was illusory and would have required demotion in title. Given the highly factual nature of these issues, the Court agrees that they should not be decided on summary judgment. Columbia's stated reasons may provide ample evidence with which to rebut any appearance of retaliation, but they not prevent retaliation from being a genuinely disputed factual issue, one that depends on determining context and credibility, as well as the application of Columbia's personnel policies. Again this was another very close question, in my view.

As for Columbia's contention that plaintiff has not demonstrated sufficient knowledge of her protected activity, plaintiff's communications to Columbia's counsel and high-ranking faculty members demonstrate the required "general corporate knowledge." See the Gordon case, 232 F.3d at 116.

In sum, weighing whether Columbia's given reasons preclude retaliation as a but-for cause, of which there may be more than one, is a question best left for the jury. See Zann Kwan, 737 F.3d at 846 (Note 5).

The Court also denies summary judgment on the retaliation claims insofar as they're based on imputing Bekaert's allegedly retaliatory behavior to his employer,

Columbia. As discussed above, a reasonable jury could find that Bekaert retaliated against plaintiff for her complaints about his conduct. The parties only referred to this implicitly, but a reasonable jury could, on the facts currently on the record, find Columbia liable for such conduct pursuant to the so-called "Cat's Paw" liability, theory of liability.

Cat's Paw liability refers to a situation in which an employee is subjected to an adverse employment action by an employer that has no impermissible motive, but has been manipulated by a subordinate who does not have such motive -- who does have such motive and intended to bring about the adverse employment action. See the Vasquez case from the Second Circuit from 2016, 835 F.3d at 272.

The Court has already found that Bekaert was not plaintiff's supervisor, but the Second Circuit has extended Cat's Paw liability to cases involving co-workers "if the employer's own negligence gives effect to the co-worker's animus and causes the victim to suffer an adverse employment action." See Vasquez at 276. Here, plaintiff alleges that Bekaert retaliated against her, that Columbia insufficiently investigated and acted on her complaints about retaliation, and that her tenure record suffered from the ensuing obstruction of her research and reputational harm, leading to her tenure denial and termination.

Thus, a reasonable jury could infer that Bekaert's

retaliatory conduct was a but-for, and intentional, cause of plaintiff's tenure denial and subsequent termination, and that liability for such conduct should be imputed to Columbia for its alleged negligence. For the same reasons, summary judgment is denied on plaintiff's city retaliation claim against Columbia, because a triable issue remains whether Columbia "failed to take immediate and appropriate corrective action" on plaintiff's complaints of retaliation. See the New York City Administrative Code, 8-107 (13)(b)(2).

The Court, therefore, denies defendants' motion for summary judgment on plaintiff's federal and city retaliation claims. The Court notes that the denial of summary judgment or retaliation extends to a denial of summary judgment on plaintiff's claims of unjust termination against Columbia, Counts 6, 12 and 18, insofar as those counts in the complaint appear to be based on a theory of retaliation against plaintiff's protected activities.

The Court next turns -- and we have a few more minutes left -- to defendants' motions for summary judgment on plaintiff's quid pro quo sexual harassment claims brought pursuant to both federal and city law. I am granting summary judgment as to the federal claims against Columbia, but denying it as to the city claim against Columbia and Bekaert.

To establish a federal prima facie case of quid pro quo harassment, a plaintiff must present evidence that she was

subjected to unwelcome sexual conduct and that her reaction to that conduct was then used as the basis for decisions affecting the compensation, terms, conditions or privileges of her employment. Fitzgerald, 251 F.3d at 356. The decision taken must be a tangible employment action, meaning a hiring, firing, failure to be promoted, reassignment with different responsibilities, or a change in benefits. Schiano, 445 F.3d at 604. In other words, a tangible employment action is generally the type of official documented action undertaken by a supervisor. See Ellerth, 524 U.S. at 762.

As I have already explained, Bekaert was not plaintiff's supervisor. Therefore, he did not have the authority to take tangible employment action against her. Plaintiff has presented no evidence to the contrary.

Plaintiff contends that the appropriate standard is actually whether there has been a materially adverse change to employment conditions, citing an Eastern District case, but that case did not deal with a quid pro quo harassment claim which Second Circuit precedent makes clear applies the higher showing of tangible employment action. See Schiano, 445 F.3d at 604. Plaintiff has not made that showing.

Columbia's motion for summary judgment is, therefore, granted as to plaintiff's federal quid pro quo allegations against Columbia, Counts 8 and 14.

The New York City Human Rights Law under which

plaintiff brings quid pro quo claims against both Bekaert and Columbia has uniquely broad and remedial purposes and does not require a tangible employment action such as hiring or firing. See the Williams case, 61 A.D.3d at 40. Plaintiff's evidence that Bekaert allegedly conditioned her work progress on her attitude towards him and allegedly retaliated against him when she resisted his advances is, thus, sufficient to make out a triable quid pro quo claim under New York City law. As for the reasons allegedly outlined, namely an alleged attempt to dissuade plaintiff's complaint and an alleged failure to adequately investigate and correct Bekaert's conduct, there is a triable issue as to whether Columbia should be held liable for Bekaert's alleged conduct. Summary judgment is, therefore, denied as to the city quid pro quo claim, Count 2, against Bekaert and Columbia.

I next turn to Columbia's motion for summary judgment as to plaintiff's discrimination claims against it that stem from her denial of tenure and her termination. I am granting the motion in part and denying the motion in part. As for her retaliation claims, plaintiff's discrimination claims are subject to a similar three-part-burden-shifting test, although, of course, the elements differ somewhat. Plaintiff can establish a prima facie case of discrimination, by showing that (1) she belonged to a protected class, in this case, based on her gender; (2) she was qualified for sought-after position;

(3) she was denied that position; and (4) the denial occurred under circumstances giving rise to an inference of discrimination. Roge, 257 F.3d at 168.

Plaintiff has not created a triable issue whether her tenure denial occurred under circumstances giving rise to an inference of discrimination of Columbia's part, under either federal or New York City Human Rights Law standards. No reasonable jury could find that Columbia discriminated against plaintiff based only on one administrator's "soap opera" comment and the, at best, marginally different treatment of one male professor decades ago. Even under the less stringent "treated less well" standard of the New York City Human Rights Law, plaintiff still must show the treatment was "because of a discriminatory intent," and plaintiff has not made such intent for Columbia a triable issue. Mihalik at 110.

Plaintiff's discrimination claims are, however, still viable under the Cat's Paw theory of liability. As noted previously, that theory holds an employer may be liable for an adverse employment action if it, through negligence, gives effect to the impermissible animus of a victim's co-worker. See Vasuez, at 273. A reasonable jury could find that Bekaert played a meaningful role in plaintiff's tenure denial and termination by obstructing her research and attacking her reputation and, thus may have "impermissibly tainted the ultimate employment decision. Bickerstaff, 196 F.3d at 450.

Look, as discussed, there are disputed factual issues as to the adequacy of Columbia's handling of plaintiff's complaints, including the testimony that an administrator discouraged the complaint and that the investigation was delayed as well as prejudged by the investigator. A reasonable jury could find that Columbia was negligent in allegedly failing to adequately investigate and stop such behavior, and in doing so, gave effect to Bekaert's allegedly discriminatory animus. See Velazquez-Perez, 753 F.3d at 274.

Columbia may argue at trial that officials responsible for making a tenure decision based their decision exclusively on an independent evaluation of her Ravina's unobstructed record and may well prevail, but that is another highly disputed factual matter for the jury to decide. I understand Columbia's position that the tenure decision itself is entitled to substantial deference, and I don't disagree, plaintiff's claims are based on the conditions that shape the vote, not the vote itself.

In sum, no reasonable jury could find that Columbia discriminated against plaintiff on the basis of her gender, but triable issues remain as to whether Columbia should have liability for Bekaert's discriminatory conduct imputed to it for its alleged negligence. The Court, therefore, grants summary judgment on plaintiff's discrimination claims as they relate to any alleged direct discrimination by Columbia, but

denies it as they relate to imputing liability to Columbia based on Bekaert's alleged discriminatory conduct.

I will put this in an order for you so it will be clear exactly how I ruled as to each claim.

In sum, the Court today has granted summary judgment on the following:

Plaintiff's federal quid pro quo harassment claims against Columibia, Counts 8 and 14.

Plaintiff's discrimination claims against Columbia, Counts 1, 5, 6, 7, 11, 12, 13, 17 and 18, but only as to the alleged direct discrimination by Columbia. Those claims survive summary judgment insofar as they are based on imputing Bekaert's allegedly discriminatory conduct to Columbia based on Columbia's alleged negligence in handling allegations regarding the conduct. Additionally, as noted, the termination claims, Counts 6, 12 and 18, also survive based on retaliation.

Obviously, none of my rulings express any view on the underlying merits of the case which are highly fact- and credibility-dependent. Based on my rulings, I think the issues that are primarily going to be disputed at trial are:

Whether Bekaert harassed and discriminated against plaintiff;

Whether Bekaert retaliated against plaintiff and obstructed her research and tenure prospects; and

Whether, in light of the close time proximity between

plaintiff's protected activity and certain actions by Columbia, in addition to related factual disputes, whether Columbia retaliated against plaintiff, as well as whether Columbia handled plaintiff's complaints negligently and in so doing gave effect to any animus on the part of Bekaert.

I assume you will be ordering the transcript. As I said, I will put sort of the bottom line in a ruling later today. Thank you for your patience today. I just wanted to get you a ruling, given the trial is coming upon us. We are set to proceed for the jury trial on June 9th. I expect to rule on the redactions that have been requested as well as the motions in limine either before or at the July 2nd final pretrial conference. Please do let me know if my ruling today in any way moots any of the motions that have been made. That is my ruling.

I know I just got a letter from plaintiff today objecting to the proposed exhibit list. That motion is denied.

I am happy to go off the record if you wanted to, and you may need time to think about this and talk to your clients, but I will say this. If settlement is a possibility and there is any way the Court can assist in that effort, please let me know. I know that there were scheduling issues and issues with staffing, and I know that was inconvenient, but I felt like we couldn't move the trial in light of plaintiff's availability and my court schedule.

We are going to proceed to trial on June 9th. The only thing that I will say is that I have heard from the jury room that July 9th is a very busy day. I can check back in closer to that date and let you know, but if it seems like, because they always give precedent to criminal trials, if it seems like we are not going to be able to choose a jury, we may start on the 10th. I would rather make that decision a little closer to see if all those trials are still going, if you have scheduling issues with witnesses, and it would be preferable to know you can start on the 10th, I can do that, too. I don't know if you have authorities on that now. I don't know if you want to be in touch and see how things go. I don't know if there are particular scheduling issues with respect to witnesses.

MS. PLEVAN: Are there days when you know that you will not sit?

THE COURT: Let me get my calendar.

MS. PLEVAN: I don't know if you sit on Fridays.

THE COURT: I usually don't. Let me look at the calendar. I usually always sit on Fridays when a jury is deliberating, but I make exceptions. If you, for scheduling or other reasons, wanted to sit on that Friday, and we weren't sitting on Monday, I would be happy to do that and rearrange my schedule. Let me know in advance and I can do that.

MS. PLEVAN: But, otherwise, we would not --

THE COURT: Otherwise, I think we would not. Again I am open to hearing from you because I can accommodate my schedule. Do you still anticipate the trial will last approximately two weeks?

MS. PLEVAN: Two weeks or a little more depending on the motions in limine, obviously.

THE COURT: All right.

MS. PLEVAN: I think we said 10 days, actually.

THE COURT: 10 days, okay. I think the only thing is, I do have a criminal trial scheduled to start on the 23rd. I think in light of that, I probably will sit on the Fridays unless that is an issue for anyone and I will just rearrange my schedule accordingly. Then hopefully we'll get through the trial in those two weeks and I won't have to put off the other case. Why don't we, and to go back on what I said, assume we will sit on the Fridays, okay?

I will, but why don't we be in touch. Ms. Cavale will be in touch with you the week of June 2nd and see if June 9th still seems like so busy a day for the jury room, in which case we'll start on the 10th, okay? Thank you for all coming in today. Thank you for your patience in sitting and listening, and again you can, of course, get the transcript from the Court reporters.

(Court adjourned)